

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

NO.: CR-2-10-145 (1)
JUDGE GRAHAM

KEVIN L. BURTON

PLEA AGREEMENT

The United States of America and Defendant **KEVIN L. BURTON**, hereby enter into the following Plea Agreement pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure:

1. Defendant, **KEVIN L. BURTON**, will enter pleas of guilty to three counts of the Indictment, which charge him with conspiracy to manufacture, distribute and possess with intent to distribute 1000 kilograms or more of marijuana, in violation of 21 U.S.C. §846 (count 1); conspiracy to obstruct justice, in violation of 18 U.S.C. §1512(k) (count 4); and money laundering, in violation of 18 U.S.C. §1956(a)(1)(b)(i) (count 5). Defendant also agrees to forfeit the U.S. currency described in Forfeiture Allegations D and E of the Indictment as well as all real estate described in Exhibit 1 attached to this plea agreement and further described in ¶13 - ¶15 of this Plea Agreement.

2. Defendant **KEVIN L. BURTON** understands that the potential sentence which can be imposed on the violation set forth in count 1 of the Indictment is a mandatory minimum term of imprisonment of

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ten (10) years; a potential maximum term of imprisonment of life; a \$4,000,000 fine; and a minimum term of supervised release of five years with a possible maximum supervised release period of life. Defendant further understands that the potential sentence which can be imposed on the violation set forth in count 4 of the Indictment is a potential maximum term of imprisonment of twenty (20) years, a \$250,000 fine and a three (3) year term of supervised release. Defendant further understands that the potential sentence which can be imposed on the violation set forth in count 5 of the Indictment is a potential maximum term of imprisonment of twenty (20) years, a \$500,000 fine, and a three year term of supervised release. Defendant further understands that the potential maximum sentence on each count can be imposed consecutively to each of the other counts.

3. Prior to the time the defendant is sentenced, he will pay to the U.S. Department of Justice special assessments in the amount of \$300.00, as required in 18 U.S.C. §3013. These assessments shall be paid by the defendant before sentence is imposed and defendant will furnish a receipt at the time of sentencing. The payments shall be made to the United States District Court, at the Clerk's Office, 85 Marconi Blvd., Columbus, Ohio 43215.

4. Defendant **KEVIN L. BURTON** agrees to testify truthfully and completely concerning all matters pertaining to the Indictment and to any and all other unlawful activities related to the

manufacture and distribution of marijuana, obstruction of justice and/or money laundering in which he may have been involved or as to which he may have knowledge. Defendant further agrees to provide a complete statement to authorities of the United States concerning such matters prior to the entry of his guilty plea pursuant to this agreement. Defendant agrees to submit to supplemental debriefings on such matters whenever requested by authorities of the United States, whether before or after his plea is entered.

Pursuant to §1B1.8 of the United States Sentencing Guidelines (hereinafter "U.S.S.G." or "Federal Sentencing Guidelines"), the government agrees that any self-incriminating information so provided will not be used against the defendant in determining the applicable guideline range for sentencing, or as a basis for departure from such guideline range.

5. If such pleas of guilty are entered, and none are withdrawn, and Defendant **KEVIN L. BURTON** acts in accordance with all other terms of this agreement, the United States Attorney for the Southern District of Ohio agrees to dismiss Counts 2-3 and 6-13 at the time of sentencing, and further agrees not to file additional criminal charges against Defendant **KEVIN L. BURTON** based on his activities charged in the Indictment described herein and based on other unlawful activities related to the distribution of controlled substances, obstruction of justice and money laundering in the Southern District of Ohio occurring prior to the date of the

Indictment and as to which Defendant gives testimony or makes statements pursuant to this agreement.

6. By virtue of the defendant pleading guilty to counts 1, 4, and 5 of the Indictment in exchange for an agreement to dismiss counts 2-3 and 6-13, and not to bring additional charges, Defendant **KEVIN L. BURTON** understands that he is not a prevailing party as defined by 18 U.S.C. §3006A and hereby expressly waives his right to sue the United States.

7. The parties agree that, pursuant to U.S.S.G. §§2D1.1 & 1B1.3, the relevant conduct attributable to Defendant **KEVIN L. BURTON**, which can be proved by the United States independent of his proffer, is more than 1,000 kilograms but less than 3,000 kilograms of marijuana. The parties agree that this would result in a base offense level of 32. The parties further understand that this agreement is not binding on the Court and the final determination concerning the amount of controlled substances to be considered as relevant conduct for purposes of sentencing rests with the Court.

8. For purposes of this particular plea agreement, the United States agrees it will not pursue the two-level enhancement for possession of a firearm, pursuant to U.S.S.G. §2D1.1(b)(2). The parties further understand that this agreement is not binding on the Court and the final determination as to whether this two-level enhancement for possession of a firearm applies in this case rests with the Court.

9. The parties further agree that, pursuant to U.S.S.G. §2S1.1, the base offense level attributable to the money laundering conspiracy in count 5 of the Indictment is an offense level 32, which is the offense level for the underlying drug conspiracy, prior to any adjustment for role in the offense. The parties further agree that an additional two levels should be added to this base offense level, pursuant to U.S.S.G. §2S1.1(b)(2)(B), because the defendant is pleading guilty to an offense under 18 U.S.C. §1956. The parties further understand that this agreement is not binding on the Court and the final determination concerning the applicable offense level applicable to the money laundering conspiracy for purposes of sentencing rests with the Court.

10. The parties further agree that, pursuant to U.S.S.G. §3B1.1(a), Defendant **KEVIN L. BURTON** was an organizer and leader of the criminal activity outlined in counts 1, 4 and 5 of the Indictment, involving five or more participants, which results in a four-level increase in the base offense level for role in the offense. The parties further understand that this agreement is not binding on the Court and the final determination concerning role in the offense for purposes of sentencing rests with the Court.

11. The parties further agree that, pursuant to U.S.S.G. §2J1.2, U.S.S.G. §3C1.1 and Application Note 8 to U.S.S.G. §3C1.1, Defendant **KEVIN L. BURTON** willfully obstructed, impeded and attempted to obstruct and impede the administration of justice with

respect to the investigation of the conspiracy to manufacture and distribute marijuana in Count 1 and the money laundering offense in Count 5 of the Indictment resulting in an two-level increase in the offense level applicable to those two offenses. The parties further understand that this agreement is not binding on the Court and the final determination concerning the calculation for defendant's obstruction of justice for purposes of sentencing rests with the Court.

12. The United States Attorney for the Southern District of Ohio recommends that, as of the time of the execution of this Plea Agreement, Defendant **KEVIN L. BURTON** has accepted responsibility for the offense to which he has agreed to plead guilty. If the defendant continues to accept responsibility through the time of sentencing, the United States will advise the District Court, pursuant to U.S.S.G. §3E1.1(b), that the defendant has timely notified authorities of his intention to plead guilty, resulting in a three level decrease in the base offense level.

13. Defendant **KEVIN L. BURTON** agrees to forfeit all right, title and interest he has in \$120,999 in U.S. currency seized during the execution of the search of his residence, 249 Carter Rd., Lucasville, Ohio, on August 27, 2007, as set forth in Forfeiture Allegation D of the Indictment; and \$293,221.16 in U.S. currency received from the sale of the Rubber Duck Car Wash in Jackson, Ohio, as set forth in Forfeiture Allegation E of the

Indictment. Defendant agrees not to contest the judicial and/or administrative forfeiture of this currency. Defendant agrees he is the sole owner of said currency and the currency was derived from the proceeds of the marijuana trafficking conspiracy in Count 1 of the Indictment and/or involved in the money laundering offense alleged in Count 5 of the Indictment.

14. Defendant **KEVIN L. BURTON** further agrees to give up any ownership rights he may have in all real estate listed in Exhibit 1, attached to this plea agreement. Defendant voluntarily surrenders for forfeiture all right, title and interest he has in said property, which was either used to facilitate the marijuana conspiracy alleged in Count 1 of the Indictment and/or purchased utilizing proceeds derived from the sale of marijuana. Defendant waives all noticing deadlines and any rights he may have to notice and to an opportunity to be heard concerning the disposition of said real estate. Defendant voluntarily abandons this real estate to the United States with the understanding that this property will be forfeited to the United States and thereafter disposed of in accordance with law. Defendant agrees to assist the United States in obtaining releases from any of his family members, in whose names these properties were deeded by the Defendant.

15. The United States agrees it will not seek forfeiture of the real estate listed in Exhibit 2, attached to this plea agreement. The Defendant understands that should the United States

discover the Defendant has an ownership interest in any real property, which has not been listed in either Exhibit 1 or 2 of this plea agreement, the United States has the right to seek forfeiture of said real estate.

16. Defendant **KEVIN L. BURTON** is aware that the United States Sentencing Guidelines and Policy Statements are no longer mandatory in determining his sentence. However, the defendant also understands that said guidelines and policy statements will be given consideration by the District Court, in conjunction with all other sentencing factors set forth in 18 U.S.C. §3553(a), to determine the appropriate sentence, pursuant to U.S. v. Booker, 543 U.S. 220 (January 12, 2005). Defendant is further aware that the District Court has jurisdiction and authority to impose any sentence within the statutory maximum set forth for the offense to which the defendant pleads guilty. Defendant is aware that the Court has not yet determined a sentence. Defendant is also aware that any estimate of the probable sentencing range under the United States Sentencing Guidelines that the defendant may have received from the defendant's counsel, the United States, or the probation office, is a prediction, not a promise, and is not binding on the United States, the probation office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw the guilty plea based upon the actual sentence imposed.

17. Defendant **KEVIN L. BURTON** understands that this agreement does not protect him from prosecution for perjury, should he testify untruthfully, or for making false statements, nor does it protect him, from prosecution for other crimes or offenses as to which he does not make admissions or give truthful information and which the United States discovers by independent investigation. Further, should Defendant **KEVIN L. BURTON** fail to comply with the terms and conditions set forth herein or should he fail to appear as required for sentencing, this agreement is voidable at the election of the United States, and Defendant **KEVIN L. BURTON** shall be subject to prosecution as if the agreement had never been made.

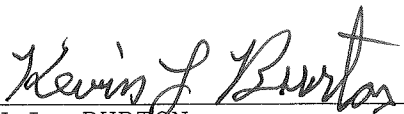
18. It is agreed that if the Court refuses to accept any provision of his Plea Agreement, with the exception of paragraphs 7 through 12 as noted therein, neither party is bound by any of its provisions, Defendant **KEVIN L. BURTON** may withdraw his guilty plea, and the United States Attorney for the Southern District of Ohio may pursue prosecution of the same or additional charges without prejudice. In such case, it is also agreed that any self-incriminating statements made by the defendant, pursuant to this agreement, shall be considered as part of plea negotiations and subject to the restrictions of Rule 11(f) of the Federal Rules of Criminal Procedure.

19. The United States Attorney for the Southern District of Ohio further agrees that if the defendant provides substantial

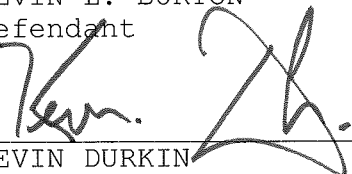
assistance in the investigation or prosecution of others who have committed criminal offenses, the United States Attorney for the Southern District of Ohio may move the Court pursuant to 18 U.S.C. §3553(e) and/or §5K1.1 of the Federal Sentencing Guidelines for an appropriate departure from the otherwise applicable guideline range for the defendant's sentence and will in connection therewith make known to the Court the nature and extent of the defendant's assistance. Defendant understands that whether such a motion for departure should be made is within the sole discretion of the United States Attorney for the Southern District of Ohio. Defendant further understands that whether and to what extent such a motion should be granted are solely matters for determination by the Court.

20. No additional promises, agreements or conditions have been made relative to this matter other than those expressly set forth herein, and none will be made unless in writing and signed by all parties.

11/30/10
DATED



KEVIN L. BURTON
Defendant




KEVIN DURKIN
Attorney for Defendant

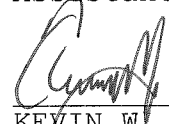


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